



March 19, 2002

Mr. Craig H. Smith
Director of Legal Services
Texas Workers' Compensation Commission
4000 South IH-35
Austin, Texas 78704-7491

OR2002-1365

Dear Mr. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 159362.

The Texas Workers' Compensation Commission (the "commission") received a request for a list of 2000 and 2001 workers' compensation fraud cases as well as, any judgments or settlements that may have been reached in those cases. You indicate that you will release the responsive judgment information. You also state that the commission "has no record of any settlement made in 2000 or 2001[.]" We note that the Public Information Act does not require a governmental body to make available information which did not exist at the time of the request nor does it require a governmental body to prepare new information in response to a request. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.--San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 (1992), 362 (1983); see Gov't Code §§ 552.002, .021, .227, .351. Nevertheless, the commission must make a good faith effort to relate a request to information which it holds. Open Records Decision Nos. 561 (1990), 87 (1975); see Gov't Code § 552.353 (providing penalties for failure to permit access to public information). Although you state that a list of fraud cases does not exist, you indicate that the commission maintains information from which the requested list can be produced. You claim, however, that the information from which the list could be produced is protected from disclosure under section 552.101 in conjunction with section 402.092 of the Labor Code and section 552.108 of the Government Code. We have considered your arguments and reviewed the submitted sample information.¹

¹This letter ruling assumes that the submitted sample information is truly representative of the responsive information as a whole. This ruling neither reaches nor authorizes the district to withhold any responsive information that is substantially different from the submitted information. See Gov't Code § 552.301(e)(1)(D); Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses information protected by other statutes. Section 402.092 of the Labor Code provides that information maintained in the investigative files of the commission is confidential and may not be disclosed except in four limited circumstances, none of which apply here. Labor Code § 402.092(a). “Investigative file” is defined as “any information compiled or maintained by the commission with respect to a commission investigation authorized by law.” *Id.* § 402.092(d). Section 414.005 of the Labor Code provides that the commission’s Compliance and Practices Division shall maintain an investigation unit for the purpose of conducting investigations relating to alleged violations of the Texas Workers’ Compensation Act and the commission’s administrative rules. *See* Labor Code § 414.005; *see also* §§ 414.001, .002.

You state that the requested list “can only be produced with information derived from” the investigative files of the Compliance and Practices Division. You explain that these investigative files concern violations of federal law, the Texas Labor Code, the Texas Penal Code, the Texas Workers’ Compensation Act, and the commission’s administrative rules. Based on your representations and our review of the submitted sample information, we conclude that the information used to produce the requested list is confidential under section 552.101 in conjunction with section 402.092 of the Labor Code. Consequently, in this instance, the commission must not release this information nor produce the requested list.²

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling,

²Because we are able to make a determination under section 552.101, we need not address your additional arguments under section 552.108.

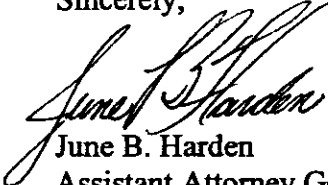
the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Pubic Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/seg

Enc. Submitted Documents

Ref: ID# 159362

c: Mr. Mike Slattery
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(w/o enclosure)